YONG YOK MIN

v.

MIRI MUNICIPAL COUNCIL

HIGH COURT SABAH & SARAWAK, MIRI
TUAN TEE AH SING JC
[ORIGINATING SUMMONS NO. MR3 OF 1994]
21 APRIL 1995

ADMINISTRATIVE LAW: *Local authority - By-laws - Validity - Whether provision of Local Authority Ordinance could be invoked to revoke licence issued under By-Laws - Section 3 Miri District Council (Markets) By-Laws - Sections 25(1), (4), (5) Local Authority Ordinance (Sarawak Cap 117).*

ADMINISTRATIVE LAW: *Licence to prepare and sell food - Terms and special conditions imposed by license, By Laws and Ordinance - License to trade personally and not to employ others without consent - Whether conditions reasonable and fair.*

ADMINISTRATIVE LAW: *Rules of natural justice - Local authority - Revocation of trading licence - Whether licencee given reasonable opportunity of being heard - Whether right of being heard can be in the form of writing - Whether revocation lawful.*

The plaintiff had a licence to operate a food stall in the open air market, Miri, issued by the defendant under s. 25 of the Local Authority Ordinance (Sarawak Cap 117). She engaged her niece to be one of the helpers at the stall. In July 1993, the defendant sent a show cause notice to the plaintiff that she was not trading personally at her stall for a long period and therefore had breached the special conditions of the licence. The plaintiff replied that her helper was on maternity leave and that the she would soon resume trading.

On 6 September 1993 the defendant issued a show cause reply directing the plaintiff to commence trading at the stall within one month. The plaintiff did not comply and on 1 November 1993, the defendant issued an order under s. 25 Local Authority Ordinance revoking the licence. The plaintiff filed an originating summons for a declaration that the order revoking the licence was null and void, *ultra vires, mala fide,* contrary to natural justice etc. and argued that since the licence was issued under s. 3 of Miri District Council (Markets) By-Laws, s. 25(5) Local Authority Ordinance could not be used to revoke the said licence. The plaintiff further argued that she need not trade "personally" but could trade with helpers and that the licence was unreasonable and unfair. She also claimed that the defendant breached the rules of natural justice in not giving her an opportunity to be heard orally before revoking the licence.

Held:

[1] Section 30 of the Local Authority Ordinance gave powers to a local authority to make by-laws and since the Miri District Council (Markets) By-Laws were made under s. 30 aforesaid, the by-laws are valid.

[2] It was clear from s. 25(1) of the Local Authority Ordinance that the licence issued under s. 3 of the By-Law shall be deemed to be granted under the Ordinance and the special conditions attached to the licence were validly made under s. 25(4) of the Ordinance. Therefore, on breach of the By-Laws or conditions, the defendant can exercise its powers under s. 25(5) of the Ordinance to revoke the licence by virtue of s. 25(1) of the same.

[3] Section 5(1) of the By-Laws and condition 18 of the licence had been breached by the plaintiff as the licence was personal to holder and the plaintiff was not trading personally from 1 July 1993 to 7 October 1993. As such, the defendant's direction on 6 September 1993 for the plaintiff to commence trading within one (1) month is reasonable.

[4] The terms and special conditions attached to the licence, the By-Laws and the Ordinance are reasonable and fair and there is no restraint of trade imposed on the defendant.

[5] The words "being heard" means a full opportunity of stating the case and can be in the form of writing. The plaintiff was given a reasonable opportunity of being heard by way of the show cause letter sent to her and her written reply dated 10 August 1993. As the plaintiff failed to comply with the show cause reply within the stipulated period, the defendant has lawfully revoked the license.

Cases referred to:
Najar Singh v. The Government of Malaysia & Anor. [1976] 1 MLJ 203 ***(foll)***
Wong Ah Suan v. Sarawak Supply Corps. & Anor [1982] 2 MLJ 89 ***(foll)***

Legislations referred to:
Local Authority Ordinance (Sarawak Cap. 117) ss. 25(1), (2), (4), (5), 30
Miri District Council (Markets) By-Laws, s. 3

For the plaintiff - Tai Choi Yu; M/s. Tai Choi Yu & Co.
For the defendant - S.H. Lim; M/s. S.H. Lim & Co.

JUDGMENT

Tee Ah Sing JC:

By an originating summons dated 17 January 1994 Yong Yok Min, the plaintiff, seeks the following reliefs:

1. A declaration that the document purported to be an order issued by the defendant herein under s. 25 of the Local Authority Ordinance (Sarawak Cap. 117) addressed to the plaintiff herein dated 1 November 1993 is null and void as being made *ultra vires* and/or *mala fide* and/or being contrary to established principles of natural justice and fairness and/or being unreasonable and/or being made not in accordance with the law and/or without jurisdiction and/or in excess of jurisdiction;
2. General damages;
3. Such other reliefs that this Court deems fit;
4. Costs incidental to and occassioned by this application.

The originating summons is supported by the affidavit of Yong Yok Min affirmed on 15 January 1994. The relevant parts of this affidavit are as follows:

> 3. I am and was at all material times the licensee of a licenced premise under licence no. 0011 and known at Lot No. 15 Open Air Market, Miri (hereinafter referred to as "the said Lot 15") held under a document purported to be a licence issued by the Miri Municipal Council under and by virtue of its powers under s. 25 of the Local Authority Ordinance (Sarawak Cap. 117). A copy of the purported licence is annexed hereto and marked "YYM-1" (hereinafter referred to as "the said purported licence").
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> 4. I was issued with the said purported licence sometime in August 1992 as a transfer from my father, Yong Chon Khin (BIC.K.183422) who had previously held the licence to conduct business at the said Lot 15 for the past 40 years.

6. As the conduct of business at the said Lot 15 under the said purported licence consisted of the preparation, sale, service, removal and cleansing of the cooked food and tables and apparatus necessary thereon I had engaged 2 helpers to assist me everyday. Without these helpers it would be impossible for me to attend to the various stages of work required from the aforesaid preparations to the final cleaning of the vicinity, tables and apparatus.

7. In view of the additional help required by me aforesaid I engaged my niece, Wong Nyuk Lan (f) as one of my helpers. She had helped me ever since I took over the said Lot 15 in August 1992. She is a very hardworking woman and I have full trust and confidence in her. She can handle the whole operations even if I am away on other matters.

11. Sometime in July 1993 I received a show cause notice from the defendant dated 24 July 1993 addressed to me with the complaint as follows:

> You have been found not trading personally at your own stall for a long period.

A copy of the said show cause notice is annexed hereto and marked "YYM9".

12. On or about 10 August 1993 I made a written reply to the said show cause notice explaining that:

> Presently, my helper who is also my niece is having her maternity leave, I will resume trading as usual the soonest.

A copy of my written reply is annexed hereto and marked "YYM-10".

13. I did not hear from the defendant after the submission of my said reply and in the meantime, my said helper, Wong Nyuk Lan (f), had given birth to a baby boy on 31 August 1993, the National Day, and she was discharged from the Miri General Hospital on l September 1993. A copy of the Receipt of Information of a Birth dated 9 September 1993 issued by the Government is annexed hereto and marked "YYM11" and a copy of the Miri General Hospital Discharge receipt is also annexed hereto and marked "YYM12".

14. The defendant did not apply his mind carefully to the reason given by me in said reply and took irrelevant matters into consideration in issuing a show cause reply to me dated 6 September 1993 directing me to commence trading at the stall within one month from the said date of reply. A copy of the show cause reply is annexed hereto and marked "YYM13".

15.1 Subsequently on l November 1993 the defendant issued a document purported to be an order issued under s. 25 of the Local Authority Ordinance (Sarawak Cap. 117) claiming to revoke the said purported licence. A copy of the said document purported to be an order is annexed hereto and marked "YYM14" (hereinafter referred to as "the said purported order").

15.2 By reason of the matter aforesaid, I suffered loss and damage.

18.1 In answer to the defendant's charge contained in its letter dated 31 December 1993 I deny that I was in breach of the conditions of the said licence for failing to trade personally at the stall for a long period.

19. The Miri Open Air Market is a public place and no licence is required for me to enter or leave at all reasonable times and I have a valid licence fully paid for the period up to December 1993 as evidenced by the Exhibit "YYM5" to conduct business at the said Lot 15.

20.1 I agree that there is an oral agreement between me and the defendant for the rent of the premise at the said Lot 15 for the conduct of business for which I paid RM650 per quarter. However, there is no term or condition agreed between us that I have to trade personally at the stall everyday or for any particular period or at all.

20.2 Further, even if there was such a term or condition in the oral tenancy agreement, which I deny, I had not breached the said term or condition.

21.1 I am advised by my lawyers that s. 25 of the Local Authority Ordinance (Sarawak Cap. 117) does not apply to my said purported licence to conduct business at the said Lot 15 nor does it apply to the said oral tenancy agreement with the defendant.

21.2 In the circumstance it is an ambiguity for the defendant to invoke the said s. 25 and therefore the purported revocation was not made in accordance with the law and is *ultra vires*.

22. I am further advised by my lawyers that I have every legitimate expectations that I can continue to conduct business at the Lot 15 at least up to the end of December 1993 for which period of licence I had paid and I am and was able and willing to pay for the rental of RM650 for the last quarter of 1993 until the untimely unlawful revocation.

24.1 The show cause reply dated 9 September 1993 was unreasonable as no reasonable person would expect the plaintiff's helper to start work unless a lapse of at least 40 days from birth had passed for her maternity leave.

24.2 In the premises the said show cause reply was *ultra vires* as being unreasonable and the purported revocation was not made in accordance with the law as provided under s. 44(4) of the Local Authority Ordinance (Sarawak Cap. 117).

25. The defendant deliberately failed and/or refused to inform me that it was not satisfied with my show cause written reply and I was given the impression that said reply was accepted. Therefore no opportunity was given to me for a fair hearing to substantiate my said written reply and to answer any charges that the defendant may have against me through proper representation by my lawyers.

26.1 The purported revocation of my said purported licence by the defendant was actuated by *malice* with ulterior motives.

The originating summons is also supported by the supplementary affidavit of Yong Chon Khin affirmed on 15 January 1994. The relevant parts of this affidavit are:

1. I am the natural father of the plaintiff herein and I am authorized to depose to this affidavit in support of her application.

3. I was the former licensee permitted by the defendant to conduct business at the Cooked Food Stall known as Lot 15 Miri Open Air Market.

4. I conducted business at the aforesaid Lot 15 for about 40 years and I was helped by my wife and children in the conduct of the business.

5. As the business conducted at the said Lot 15 consisted of preparation, cooking, service, removal and cleaning I was helped at all times by 3 helpers. It is impossible for one person to run the business all by herself.

6. As I was getting on in age I decided to transfer the business to my daughter, Yong Yok Min (f), the plaintiff so that she may continue to carry on the family tradition as I still have very many loyal customers coming regularly for my cooked food.

7. With the aforesaid in mind, I applied to the defendant by letter dated 23 March 1992 for its approval for the said transfer to the plaintiff. A copy of the application is annexed hereto and marked "YCK1".

8. The defendant accepted my said application and it replied by a letter addressed to me dated 26 August 1992 approving the said transfer where upon the plaintiff was issued with a licence in August 1992 *vide* Licence No. 0011. A copy of the said letter of approval in annexed hereto and marked "YCK2".

The defendant filed an affidavit-in-opposition which was affirmed by Voon Stzu Heng on 10 March 1994.

The relevant parts of this affidavit are as follows:

3. I am and was at all material time the health superintendent in charge of the Public Health section of the defendant which controls and supervise the operations of all the markets in Miri.

4. I crave leave to refer to paragraph 3 of the plaintiff's affidavit affirmed on 15 January 1994 (hereinafter referred to as "the plaintiff's affidavit") and filed herein. I say that the licence referred to by the plaintiff was issued by the defendant under s. 3 of Miri District Council (Markets) By-Laws. The said licence was issued subject to the said Market By Laws, Miri District Council (Licensing of Miscellaneous Occupations) By Laws and the conditions stipulated by the defendant copies of which are shown to me now exhibited hereto and marked "VTH1" and "VTH2".

5. I crave leave to refer to paragraph 4 of the plaintiffs affidavit and say that the licence issued by the defendant is not transferable. The licence issued to the plaintiff sometime in August 1992 was in fact treated as an issuance of a new licence to the plaintiff.

6. I have received reports from the Senior Health Overseer in charge of the Central Market, Brooke Road, Miri that the plaintiff have on numerous occasions failed to conduct business at the stall No. 15.

7. The defendant has a policy of making spot checking on the operations of each of the stalls in the markets under the control of the defendant. A check was carried out in the Central Market Brooke Road from l July 1993. From the inspection carried out, it was found that the plaintiff did not operate the stall from l July 1993 up to 24 July 1993. No one was trading on the stall No. 15 at all. The defendant issued a show cause notice to the plaintiff which is annexed to the plaintiff's affidavit and marked "YYM9".

8. The reason for issuance of the show cause notice was because the plaintiff has failed to trade for a long period and therefore has breached condition No. 18 of the special conditions for the licence issued to the plaintiff.

9. After receiving the show cause notice, the plaintiff did not remedy the breach as alleged in the show cause notice and continued failing to trade on the stall No. 15 and also failed to give a satisfactory explanation to the defendant.

10. The reply dated 10 August 1993 from the plaintiff which is annexed to the plaintiff's affidavit and marked "YYM10" was not acceptable to defendant for the reasons that the plaintiff's helper was in fact not on maternity leave. In fact the plaintiff's helper only delivered her baby on 31 August 1993. Whereas the dates for her failure to trade was from l July 1993 up to 7 October 1993.

11. Further I also say that the plaintiff f has never sought the permission of the defendant to engage the helper Wong Nyuk Lan (f). This contravenes s. 5 (1) of the Miri District Council (Markets) By-Laws.

12. It is true that the plaintiff has paid the licence fee for the period January 1993 to December 1993 and the stall rental for the period of January 1993 up to September 1993 copies of the receipt issued by the defendant are annexed to the plaintiff's affidavit and marked "YYM5", "YYM4", "YYM6" and "YYM7". However payment of the licence fee and the stall rental are two of the conditions of the licence issued to the plaintiff. And payment of the above licence fee and stall rental does not preclude the defendant from revoking the licence if the licensee is in breach of any other terms and conditions of the licence.

13. In response to the plaintiff's reply dated 10 August 1993 the defendant decided that the plaintiff should commence trading within one month from 6 September 1993 (full date) a copy of the defendant's reply was delivered to the plaintiff and a copy of which is annexed to the plaintiff's affidavit and marked as "YYM13".

14. Meanwhile the checking on the operations of the stall in the Central Market Brooke Road continued to be carried out. From the checking carried out the plaintiff has failed or did not carry on business from l July 1993 up to and including 7 October 1993. In view of the plaintiff's continuing breach of the licence conditions and wilful refusal to trade notwithstanding the notice from the defendant, the defendant finally decided to revoke the plaintiff's licence and the notice of the revocation of the plaintiff's licence was conveyed to the plaintiff on 1 November 1993, a copy of the said letter is referred to as annexed to the plaintiff's affidavit and marked "YYM14".

15. I crave leave to refer to paragraph 14 of the plaintiff's affidavit and say that the defendant took into consideration the relevant fact that the plaintiff has breached and wilfully refused to remedy the breach of the licence conditions notwithstanding the warning given to her. Further the plaintiff was given both a chance to show cause and also to remedy the breach but she has failed to give the defendant a satisfactory explanation on her failure to trade personally as well as to remedy the said breach.

16. I crave leave to refer to paragraph 18.1 and 18.2 of the plaintiff's affidavit and say that it was a condition of the licence granted to the plaintiff that she was required to trade personally at the stall No. 15 and not to be absent from the stall for a continued period of 5 days in a week without prior permission from the defendant. From the inspection carried out by the defendant the plaintiff has failed to trade for the period of l July 1993 to 7 October 1993 (both dates inclusive).

17. I also say that the said conditions imposed on the said licence are reasonable, not arbitrary, not oppressive not unconstitutional and not repugnant to public policy. It is a public policy that all food stall licensees are subject to health control. Before any such licence is issued all licensees must be certified to be fit and healthy for handling food to be sold to the public. It is for this reason that all licensee must be present personally at such a stall and any helper or assistant requires the permission of the defendant.

18. I crave leave to refer to paragraph 20 of the plaintiff's affidavit and I am to say that there is no oral agreement with the plaintiff for the plaintiff to rent the stall No. 15 for the conduct of the business. The plaintiff is only granted a licence to operate a food stall No. 15 upon the conditions that the plaintiff pays the licence fee and also the stall rents chargeable by the defendant. The said licence was issued subject to the terms and conditions stipulated under the Miri District Council (Licencing and Miscellaneous Occupation) By-Laws and the Miri District Council (Markets) By-Laws and also the conditions stipulated in the list of conditions stated in the Exhibit "VTH1" and "VTH2" referred to in paragraph 4 hereabove.

19. I will say that the revocation of the plaintiff's licence was made lawfully by the defendant after due consideration has been given to the facts and matters described hereabove.

20. There is no malice or ulterior motives in the decision by the defendant to revoke the plaintiff's licence.

The plaintiff filed an affidavit-in-reply affirmed on 16 April 1994. The relevant parts reads as follows:

3. I have seen and read the document purported to be an affidavit in opposition affirmed by a Voon Stzu Hang, the Miri Municipal Council's (hereinafter referred to as "the MMC Health Superintendent dated 10 March 1994 and I deny all the allegations and/or evidence stated therein in so far as they are in conflict with and/or in contradiction to and/or different from the averments and/or evidence as stated in my affidavit in support dated 15 January 1994.

4. Specifically I deny that I "failed to give a satisfactory explanation to the defendant" in my show cause reply. I was never informed and/or told by the defendant that my said show cause reply was not "satisfactory" nor was I given an opportunity to properly present my case by a hearing. If my said show cause reply was not "satisfactory" it is only fair that I should be so informed so that I can give a better explanation to settle the misunderstanding but I was not given any opportunity at all and was shocked to receive the purported MMC's order dated l November 1993 revoking my licence to trade at stall 15.

5. Further between 8 October 1993 and 27 December 1993 I continued to trade and conduct business at the said stall 15 until I was served with the said MMC's order of revocation of licence dated the l November 1993.

6 Further I and/or my father, Yong Choon Kim had paid and/or contributed valuable and monetary consideration for the construction and tiling of the stall No. 15 at the Miri Open Air Market which was licenced to me.

6.2 I and/or my said father paid and/or contributed RM1,000 or thereabout as aforesaid. A copy of one of the receipts for RM250 from Syarikat Aik Khung Sdn. Bhd. dated 18 October 1984 is annexed hereto and marked "YYM17".

The deponents in the affidavits from the 2nd to the 6th supplementary affidavits in support affirmed that between 8 October 1993 to 20 December 1993 they personally saw the plaintiff trading and conducting business at the stall No. 15 at the Miri Open Air Market.

In the 7th supplementary affidavit-in-support Chai Chin Lee averred that she was given 42 days maternity leave by her employer after giving birth to a baby.

Wong Nyuk Lan in the 8th supplementary affidavit-in-support averred, *inter alia* as follows:

3. I am an employee and/or agent and servant of the plaintiff employed at the plaintiff cooked food stall No. 15 at the Miri Open Air Market, Miri.

4. Besides myself, my husband and another girl helper also worked for the plaintiff at the same stall aforesaid. It is impossible for the plaintiff to trade by herself alone at the said stall without employee and/or helper.

5. In 1993 I was pregnant bearing my 4th child and my doctor, after several medical examinations, advised me to temporarily stop working for the plaintiff as aforesaid after the 5th month of my pregnancy because the fetus was conceived at the lower part of the womb thereby increasing the likelihood and/or danger of a miscarriage.

6. However, I continued to work as aforesaid even in my 5th month of pregnancy and I only stopped work temporarily for about 1 month at or about the end of July 1993 prior to child birth.

7. I gave birth to a baby at the Miri General Hospital on 31 August 1993. A copy of the Receipt of Information of a Birth is annexed herewith and marked "WNL1".

8. After the said child birth I returned to work at the said stall on or about 8 October 1993 and I continued to so work until 27 December 1993.

9. Throughout the time aforesaid between 8 October 1993 to 27 December 1993 my husband and the said lady helper also worked with me. The plaintiff also worked together with us but sometimes she let us manage the work ourselves as she was the boss and/or employer.

Voon Stzu Heng affirmed a supplementary affidavit-in-opposition on behalf of the defendants on 4 March 1994. The relevant parts of this affidavit reads as follows:

4. I crave leave to refer to paragraph 5 of the plaintiff's affidavit in reply (paragraph 3(i) hereabove) paragraph 4 of each of the 2nd, 3rd, 4th, 5th and 6th supplementary in support (paragraph 3(ii)-(iv) hereabove) and say that the plaintiff did not carry on any trading from 1 July 1993 to 7 October 1993. I will further say that the plaintiff did not trade personally on the licenced stall from 8 October 1993 to 27 October 1993.

5. I will say further that the plaintiff has been employed by Justimber Sdn. Bhd. since March 1993 and is currently being employed by the same company and as such has not been able to trade personally on the licensed stall.

6. I say that the plaintiff has been given an opportunity to be heard by the defendant issuing a 'show cause letter' and also a 'show cause reply' requiring the plaintiff to trade personally. The plaintiff has wilfully failed to comply with the defendant's condition of the licence. It was for the reasons of the plaintiff's wilful breach of the licence conditions that the defendant decided to revoke the said licence.

7. Para. 6.1 and 6.2 of the plaintiff's affidavit in reply is not relevant to and has no connection with the revocation of the licence.

8. I crave leave to refer the affidavit's affirmed by one Chai Chin Lee (f) and Wong Nyuk Lan (f) affirmed on 16 April 1994 and 19 April 1994 respectively. I will say that the fact that the plaintiff's helper Wong Nyuk Lan (f) was on maternity leave is not relevant. The plaintiff has never sought for the defendant's consent to engage such a helper and such consent are necessary.

The plaintiff on 6 March 1994 affirmed a supplementary affidavit-in-reply. The relevant parts are as follows:

3. I crave leave to refer to a document which I have read and which is purported to be a supplementary affidavit in opposition filed herein and affirmed by Voon Stzu Heng on 4 May 1994 (hereinafter referred as to "the said affidavit").

4. From paragraph 4, 5 and 6 of the said affidavit it is now clear to me that the defendant's complaint against me which culminated in the revocation of my licence was that I did not "personally trade on the licenced stall" although I did trade on the licenced stall through my helpers and/or employees.

5. As far as I am aware there is no definition of the word "personally" by the defendant in its bye-laws and/or regulations and if the word "personally" means that I have to stand at the stall all day during trading times or that I must be engaged at all trading times in the cooking and/or handling of the food and/or dishes and/or in the cleaning and/or disposal thereof or that I may only be gainfully employed in one business to the exclusion of all others then I hereby challenge that the word personally" as enacted and/or legislated by the defendant in the bye-laws and regulations is unreasonable and unnecessary and therefore bye-laws *ultra vires* and null and void.

6. On paragraph 8 of the said affidavit the questions whether the defendant's consent to engage helpers as alleged had been granted to the plaintiff and whether such consent was necessary or not are irrelevant to the issue as the revocation of my licence under the show cause letter was specifically for "not trading personally at your own stall for a long period."

7. I am also not aware of any definition given by the defendant as to what is "a long period". There is no definition of "long" in the defendant's by-laws and regulations.

8. Further I am also not aware of the existence of any by-laws and regulations of the defendant for the penalty, statutory or otherwise, or for the remedy of revoking my licence on a charge of "found not trading personally at your own stall for a long period". The purported charge is a trumped-up charge drafted by the defendant to suit itself or its officers and/or agents/subordinates for ulterior motives.

The learned Counsel for the plaintiff contended that the defendant had no jurisdiction to revoke the licence and that the decision is contrary to natural justice as the plaintiff was not given a reasonable opportunity of being heard. The learned Counsel for the plaintiff submitted that the plaintiff's licence was issued under s. 3 of the Miri District Council (Markets) By-Laws (the Markets By-Laws) and not under s. 25 of the Local Government Ordinance (Sarawak Cap. 117) (the Ordinance). Therefore the defendant cannot invoke s. 25(5) of the Ordinance to revoke the said licence.

Section 30 of the Ordinance give powers to a local authority to make By-Laws.

And the Markets By-Laws were made under the said s. 30 of the Ordinance. Therefore I am of the view that the Markets By-Laws are valid.

In the Markets By-Laws there is no-provision for the revocation, suspension or cancellation of a licence.

The issue is can the defendant invoke s. 25(5) of the Ordinance to revoke the licence issued under s. 3 of the Markets By-Laws?

Section 25(1) of the Ordinance provides as follows:

> (1) A local authority may in respect of any trade, business or undertaking, or the keeping or possession of any property or the doing of any act which it is empowered to control, regulate, supervise or restrict by by-law, require by such by-laws that no person shall carry on any such trade, business or undertaking or keep or have in his possession any such property, unless a licence has been issued in respect thereof or unless such person is licensed in that behalf, and any such licence shall be deemed to be a licence granted under this Ordinance.

The pertinent parts of s. 25(1) of the Ordinance are:

> A local authority may, ... by by-law, ... by such by-laws ... unless a licence has been issued in respect, thereof ..., any such licence shall be deemed to be a licence granted under this Ordinance.

My understanding of this provision is that the licence issued under s. 3 of the Markets By-Laws "shall be deemed to be a licence granted under this Ordinance" i.e. under s. 25.

As such the provisions of s. 25(4) of the Ordinance applies to a licence issued under s. 3 of the Markets By-Laws.

Section 25(4) of the Ordinance provides as follows:

> (4) Any licence granted under this section shall be subject to such general conditions as may be prescribed in the appropriate by-laws and to such special conditions as the local authority by whom it is issued may prescribe in any particular case.

In paragraph 4 of the affidavit-in-opposition it is averred that the said licence was issued subject to the said Markets By-Laws, Miri District Council (Licensing of Miscellaneous Occupations) By-Laws and the conditions stipulated by the defendant in Exhibits "VTH1" and "VTH2".

I am of the view that the special conditions contained in Exhibits "VTH1" and "VTH2" are validly made pursuant to s. 25(4) of the Ordinance.

Further it is clearly stated in the licence No. 0011 (Exhibit "YYMl") that the said licence is issued under the Local Authority Ordinance (Cap. 117) and subject to the provisions of the Ordinance and By-Laws.

If a licensee who is granted a licence under s. 3 of the Markets By-Laws commits a breach of any of the conditions stipulated in the market by-laws or the special condition prescribed by the defendant in Exhibits "VTH1" and "VTH2" then the defendant can exercise its powers under s. 25(5) of the Ordinance to suspend or revoke the said licence. Section 25(5) of the Ordinance reads as follows:

> (5) A local authority may suspend or revoke any licence issued by it under this section if it is satisfied that the licensee has been guilty of a breach of any of the conditions under which the licence is held:
>
> Provided that no order shall be made under this subsection unless the licensee has been given a reasonable opportunity of being heard.

I am of the view that the defendant can exercise its powers under s. 25(5) of the Ordinance to revoke the said licence issued under s. 3 of the Markets By-Laws by virtue of the deeming provision contained in s. 25 (1) of the Ordinance which "shall be deemed to be a licence granted under this Ordinance".

I am also of the view that the words "under this section" in s. 25(5) of the Ordinance refers to the licence referred to in s. 25(1) of the Ordinance.

In paragraph 7 of the affidavit-in-opposition it is averred that from that inspection carried out it was found that the plaintiff did not operate the stall from 1 July 1993 to 24 July 1993. No one was trading on the stall No. 15 at all.

In paragraph 2 of the show cause notice (Exhibit "YYM9") it is recited that:

> You have been found not trading personally at your own stall for a long period. The above acts constitute a breach of the conditions of the above mentioned licence issued to you by the Council.
>
> Accordingly, you are hereby called upon to submit a written explanation and show cause why action should not be taken to suspend or revoke the said licence issued to you.
>
> The plaintiff gave a written reply dated 10 August 1993 (Exhibit "YYM10"). In the reply the plaintiff stated that her helper was having her maternity leave.

In paragraph 9 of the affidavit-in-opposition it is averred that after receiving the show cause notice (Exhibit "YYM9") the plaintiff did not remedy the breach as alleged in the show cause notice and continued failing to trade on the stall No. 15 and also failed to give a satisfactory explanation to the defendant.

The reply dated 10 August 1993 was not acceptable to the defendant as the plaintiff's helper was in fact not on maternity leave. In paragraph 11 of the affidavit-in-opposition it is averred that the plaintiff has never sought the permission of the defendant to engage the helper Wong Nyuk Lan. This contravenes s. 5(l) of the Miri District Council (Markets) By-Laws which provides that:

> no stall-holder shall employ, engage or utilise the services of an assistant, whether paid or otherwise, except with the written permission of the Council.

In paragraph 13 of the affidavit-in-opposition it is averred that in response to the plaintiff's reply dated 10 August 1993 the defendant decided that the plaintiff should commence trading within one month from 6 September 1993 (full date) *vide* a show cause reply dated 6 September 1993 (Exhibit "YYM13").

I am of the view that the reason why the show cause notice (Exhibit "YYM9") was issue was because the plaintiff has breached condition 18 of the special conditions (Exhibit "VTHl") which reads as follows:

> 18. Licensee must not be absent himself/herself from the stall for trading for a continuous period of 5 days in a week without prior permission from the Council. She was also in breach of s. 5(l) of the Markets By-Laws.

Learned Counsel for the plaintiff contended that there are no definitions of what is "a long period" and "personally". I reject this contention. Under condition 18 the plaintiff must not be absent herself from the stall for trading for a continuous period of 5 days. In this case the plaintiff was absent from her stall for trading from 1 July 1993 to 24 July 1993, that is a continuous period of 24 days. In this context the absence of 24 days can be considered a long period. It is clear from condition 18 that the plaintiff must personally be present at her stall for trading. The licence issued was personal to holder (s. 4 of the Markets By-Laws).

The Learned Counsel for the plaintiff submitted that the show cause reply (Exhibit "YYM13") directing the plaintiff to commence trading within one month is unreasonable as when Wong Nyuk Lan resumed work on 8 October 1993 she was on maternity leave for 36 days instead of 42 days and this is contrary to s. 44(4) of the Ordinance. I reject this contention. I am of the view that the period of one month for the plaintiff to commence trading at her stall is reasonable because under condition 18 of the special conditions (Exhibit "VTH1") the plaintiff must trade personally. Even if the said Wong Nyuk Lan was still on maternity leave the plaintiff could have employed temporary helpers with the permission of the defendant under s. 5(l) of the Markets By-Laws.

According to paragraph 16 of the affidavit-in-opposition it is averred that it was a condition of the licence granted to the plaintiff that she was required to trade personally at the stall No. 15 and not to be absent from the stall for a continued period of 5 days in a week without prior permission from the defendant. From the inspection carried out by the defendant the plaintiff has failed to trade for the period of l July 1993 to 7 October 1993.

And in paragraph 14 of the affidavit-in-opposition it is averred that in view of the plaintiff's continuing breach of the licence conditions and wilful refusal to trade notwithstanding the notice from the defendant the defendant finally decided to revoke the plaintiff's licence and the notice of the revocation (Exhibit "YYM14") of the plaintiff's licence was conveyed to the plaintiff on 1 November 1993.

The affidavits from the 2nd to the 6th supplementary affidavits-in-support confirmed that between 8 October 1993 to 20 December 1993 they personally saw the plaintiff trading and conducting business at the stall No. 15 at the Miri Open Air Market.

The plaintiff in her affidavit-in-reply *vide* paragraph 5 averred that between the 8 October 1993 and 27 December 1993 she continued to trade and conduct business at the said stall 15 until she was served with the defendant's order of revocation of licence dated l November 1993.

Thus it is clear that the plaintiff was not trading personally at her stall from 1 July 1993 till 7 October 1993. She only resumed trading personally from 8 October 1993.

The learned Counsel for the plaintiff further submitted that it is against public policy to try to restraint the plaintiff's trade as a dispenser of cooked food at stall No. 15 for life.

I am of the view that the terms and special conditions in the licence issued to the plaintiff, the Market By-Laws and the Ordinance are reasonable and fair. The provision in condition 18 in the special conditions (Exhibit "VTH1") that the plaintiff must not be absent for a continuous period of 5 days in a week is valid. The said condition 18 applies to all persons who want to earn a living by selling cooked food. There is no restraint of trade imposed by the defendant. If the plaintiff does not wish to continue to personally trade at stall No. 15, she can find other jobs or work.

From the affidavit-in-opposition it is clear plaintiff is gainfully employed by just Timber Sdn. Bhd. since March 1993.

The learned Counsel for the plaintiff submitted that the plaintiff has a vested interest in stall No. 15 because the construction costs of the stall was paid or contributed in part by her. I reject this contention because the said works is contrary to ss. 22 and 24 of the Markets By-Laws.

Section 22 reads as follows:

> 22. No person shall erect any sunshade, screen, partition or other temporary or permanent structure in a market without written approval of the Council.

Section 24 provides that:

> no stall shall be removed or any alteration or extension made thereto.

I agree with the submission of learned Counsel for the defendant that the Markets By-Laws and the special conditions *vide* Exhibits "VTH1" and "VTH2" are reasonable for the purpose of health control and proper management of market places.

I shall now deal with the issue whether the plaintiff was given a reasonable opportunity of being heard.

In *Najar Singh v. The Government of Malaysia & Anor.* [1976] 1 MLJ 203, Viscount Dilhorne who delivered the judgment of the Privy Council in that case at p. 205 explained the meaning of the words "being heard" in the following words:

> In this passage which was cited by Counsel on behalf of the appellant, the context shows that the words "being heard" meant "being heard orally" but this passage is no support for the proposition that unless there is an oral hearing, there is a denial of natural justice. Indeed it points in the opposite direction. What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 provided this and the appellant availed himself of the opportunity, though as the content of his representations was not disclosed, their Lordships are unable to say whether he presented a case of substance.

> In the circumstance the plea by the appellant that there was a denial of natural justice must in their Lordships' opinion be rejected. As this plea was put forward, their Lordships have dealt with it though as the regulations, which have the force By-Law, lay down a detailed procedure which was followed in this case, their Lordships do not consider that such a plea was really open to the appellant.

In *Wong Ah Suan v. Sarawak Supply Corps. & Anor* [1982] 2 MLJ 89 at p. 92 Lord Scarman said:

> The learned trial Judge went on to find a breach of natural justice, namely that the plaintiff was not given a proper or any opportunity of being heard, i.e. of presenting his case orally or in writing to the Governor-in-Council before a decision on SESCO's appeal was taken. The Federal Court does not demur from this finding. Their Lordships have no doubt that it was correct.

It is very clear from the two authorities cited that the right of being heard can be in the form of in writing. So reverting to our present case I am of the view that the plaintiff was given a reasonable opportunity of being heard by way of the show cause letter (Exhibit "YYM9") sent to her and her written reply dated 10 August 1993 (Exhibit "YYM10").

The plaintiff's written reply amounts to of being given a reasonable opportunity of being heard in accordance with the rules of natural justice. As the plaintiff did not remedy the breach by commencing trading personally and also the explanation was not acceptable to the defendant, the defendant sent a show cause reply (Exhibit "YMM13") by stating that:

> You must commence trading personally within one month from the above mentioned date.

From the uncontroverted affidavit evidence it is clear that the plaintiff did not trade personally from 1 July 1993 till 7 October 1993. The plaintiff only resumed trading on 8 October 1993. The one month from 6 September 1993 expires on 6 October 1993. As the plaintiff failed to comply with the show cause reply within the stipulated period the defendant has lawfully revoked the plaintiff's licence pursuant to s. 25(5) of the Ordinance.

I am of the view that there was no procedural impropriety in this case. I therefore dismiss the originating summons with costs to be taxed to be paid by the plaintiff to the defendant.